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No. 87-318

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PRATT & WHITNEY AIRCRAFT DIVISION,
UNITED TECHNOLOGIES CORPORATION,
Petitioner,

v.

CHRISTINE BALDRACCHI
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MEMORANDUM OF PETITIONER IN RESPONSE TO MOTION OF JONNA LINGLE FOR LEAVE TO FILE BRIEF AS AMICA CURIAE

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On September 22, 1987, Counsel of Record for Petitioner received a copy of a Motion for Leave to File Brief as Amica Curiae, which was accompanied by a Memorandum on Behalf of Jonna Lingle as Amica Curiae.[1] In both documents Lingle affirms the importance of the question presented by the petition herein and states that the question merits plenary

[1] Both documents are dated "September 1987," without specifying the day they were written or purportedly filed.

consideration by this Court. She also acknowledges that the question is the same as that presented in her own petition. *See Lingle v. Norge Division of Magic Chef, Inc.*, 823 F.2d 1031 (7th Cir. 1987), *petition for cert. filed* (U.S. Aug. 14, 1987) (No. 87-259).[2]

Lingle contends, however, that there are "jurisdiction and removal problems" in this case which should lead the Court to consider the important question of § 301 pre-emption by granting review in *Lingle* rather than in this case. By this Memorandum Petitioner simply wishes to point out that Lingle's contention is not correct, for the following reasons:

1. This case does *not* involve "defensive" pre-emption of the sort addressed in *Caterpillar Inc. v. Williams*, ___ U.S. ___, 107 S.Ct. 2425 (1987), or in *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1 (1983). *Cf.* Lingle Mem. at 2-3. Rather, as does the employer in *Lingle*, Petitioner here contends that Respondent's state-law claim for retaliatory discharge is *completely pre-empted* by LMRA § 301 and must be considered to be a claim for breach of the applicable collective-bargaining agreement, under this Court's precedents culminating in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

2. Lingle's statement that the Second Circuit in this case "did not address the question of jurisdiction" (Lingle Mem. at 2) is incorrect. In the very first words

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[2] At the time it filed its petition in this case on August 24, Petitioner was unaware that Lingle had filed a petition ten days earlier. For that reason alone, Petitioner did not refer to the pending petition in *Lingle*.

of its discussion, the Second Circuit recognized that, in light of Petitioner's contentions, the pre-emption and removal/jurisdiction issues were one and the same (Pet. App. at 4a):

> The resolution of this appeal turns on the question whether section 301 of the LMRA preempts Baldracchi's claim under the Connecticut statute. If it does, the district court acted correctly in denying the motion to remand and applying federal law; dismissal for failure to state a claim upon which relief could be granted was also proper because, under federal law, Baldracchi would first have to utilize the grievance procedure provided in the collective bargaining agreement. Conversely, if section 301 does not preempt her claim under the Connecticut statute, Baldracchi has a right to pursue it in state court, and the district court should have remanded the suit.

3. Finally, 28 U.S.C. § 1445(c) is not an independent bar to removal, as Lingle suggests (Lingle Mem. at 3). If Petitioner is correct that LMRA § 301 totally pre-empts the state law at issue, then for removal and jurisdiction purposes Respondent's claim "is necessarily *federal* in character" *Metropolitan Life Insurance Co. v. Taylor,* 481 U.S. ___, ___, 107 S.Ct. 1542, 1546 (1987) (emphasis supplied), and not a purported state-law claim of any sort. Also, and in any event, Respondent's retaliatory discharge claim is not an "action . . . arising under the [state] workmen's compensation laws" within the meaning of 28 U.S.C. § 1445(c). *See Lingle, supra,* 823 F.2d at 1038-1039 and n.9.

CONCLUSION

For the reasons stated herein and in its Petition, Petitioner respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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September 25, 1987